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CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

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CAUSE NO. 1:19-CV-704-LY

## MEMORANDUM OPINION AND ORDER

On July 12, 2019, Plaintiffs filed what they have styled as their Notice of Removal of Cause No. 18-1381-C26, a case filed by Plaintiffs on October 23, 2018 in the 26th Judicial District Court of Williamson County, Texas. Plaintiffs have moved to proceed *in forma pauperis* in this case. See Dkt. No. 5.

Addressing the substance of Plaintiffs’ Motion is unnecessary, because this matter is not properly before this Court. There is no procedural mechanism by which Plaintiffs can remove their own state court case to federal court. Under 28 U.S.C. § 1441, civil actions brought in state courts over which the district courts have original jurisdiction may be removed by the *defendant*, not by the plaintiff. This is true even where a plaintiff is “in the position” of a defendant regarding a counterclaim asserted against them. *See, e.g., Ford Motor Credit Co. v. Pearce*, 297 F. Supp. 2d

891, 892-93 (N.D. Miss. 2003) (citing *Shamrock Oil & Gas. Corp. v. Sheets*, 313 U.S. 100, 106 (1941)). Plaintiffs chose to submit themselves to the jurisdiction of the state court in the underlying proceeding. Therefore, this case has been improperly removed. Accordingly,

**IT IS ORDERED** that all pending motions are **DIMISSED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that this case is **REMANDED** to the 26th Judicial District Court of Williamson County, Texas.

SIGNED this 22nd day of August, 2019.

  
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LEE YEAKEL  
UNITED STATES DISTRICT JUDGE